

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
PORTSMOUTH, NEW HAMPSHIRE  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 p.m.**

**CITY COUNCIL CHAMBERS**

**March 21, 2006**

**MEMBERS PRESENT:** Chairman Charles LeBlanc, Vice-Chairman David Witham, Steven Berg, Nate Holloway, Alain Jousse, Bob Marchewka, and Arthur Parrott

**MEMBERS EXCUSED:** Alternate Duncan MacCallum

**ALSO PRESENT:** Lucy Tillman, Chief Planner

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Chairman LeBlanc called the meeting of the Board of Adjustment to order at 7:00 p.m.

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A) Motion for Rehearing on petition of **Hill-Hanover Group, LLC**, owners, for property located at **349 Hanover Street**.

The chairman begins by addressing old business, regarding the property at 349 Hanover Street. He states that the petitioner has requested that petition be tabled until May. The members vote to table the petition until May.

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1) Petition of **Portsmouth Farms LLC, owners, Starbucks Coffee Company, applicant**, for property located at **1855 Woodbury Avenue** wherein the following are requested: 1) a Variance from Article III, Section 10-304(A) to allow the construction of an 1,815 sf irregular shaped one story building with a 65'± front yard where 70' is the minimum required, and 2) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow parking spaces and travel aisles less than 1.9'± from the front property line and no landscaping provided where off-street parking, maneuvering space and travel aisles are required to be 40' from the front property line with a landscaped buffer. Said property is shown on Assessor Plan 215 as Lot 11 and lies within the General Business district. Case # 3-2

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Pelech outlined a previous request of his client, Starbucks Coffee Company, to reuse the existing building located at 1855 Woodbury Avenue. Due to several meetings with the Conservation Commission and the Planning Board, the new request is to demolish the existing building and to construct a new one that better fits the shape of the lot. He stated that the lot is roughly 25,000 sf, which is a quarter of the required two acre minimum in the General Business district of Portsmouth. There is an edge of inland wetland on the east side of the lot, and a 100' wetland buffer bisecting the lot. These created restrictions on the lot, which required the parking area to be repositioned and narrowed. The building is entirely inside the buildable envelope with the exception of an overhead canopy on the west side of the property for which a variance is sought.

He requested two variances. The first variance is a request to allow parking spaces and travel aisles to be within 40' of the front yard. The second is a front yard, set back variance that allows an overhang

canopy that would reduce the front yard set back to approximately 65'. He also proposes a solid stockade fence to separate the buffer between the establishment and the mobile home park, as well as a storm water runoff treatment system. Approval of the dimensional variances will place Starbucks Coffee Company under the Boccia standards set forth in Boccia vs. the City of Portsmouth. He asked the board to determine if there are any special conditions in regard to the lot. The use for the lot is within the standards of the zoning ordinance, and stays within the confines of a general business or restaurant use.

He asked that the ordinances avoid any undue financial burden on the landowner due to the fact that there is no other reasonably feasible alternative for the construction or shape of the building, and that it has been negotiated several times to comply with city law. He stated that the variance will not be contrary to the public interest, and notes the success of Starbucks in other areas. The new establishment will not create an excessive demand on municipal services in the City of Portsmouth.

Attorney Pelech stated that granting the variance is consistent with the spirit and intent of the ordinance. Starbucks Coffee Company has complied with the Inland Wetland Protection Ordinance, and hopes to improve the conditions of the wetlands by treating the runoff in the rear of the lot. It complies with the Department of Transportation ten year plan for the city. He stated that there are no violations except for the overhanging canopy, and asks that the parking lot remain as it is even though it now violates a 1995 ordinance.

He stated that substantial justice is done. There is no perceived benefit to the general public if the variance is denied, and details the need for the establishment and references marketing studies that show that Starbucks Coffee Company will be successful in the location. If the variance is denied, the hardship to the company will be substantial.

Lastly, he stated that surrounding property value will not diminish due to the establishment of a Starbucks on the lot. By maintaining the existing evergreen screen that separates the commercial lots from the residential, they have satisfied the neighbors concern that it will lessen the value of their property. He maintains that the variances in question have no effect on the properties of the residents, and therefore will not in any way devalue their properties.

In conclusion, Attorney Pelech maintained that the application meets the criteria necessary for the board to grant the two dimensional variances.

Mr. Leblanc asked about the specific location of the new business on the lot.

Attorney Pelech responded by stating that the new building will be positioned roughly in the same area as the previous building, except that it will be farther from the mobile home development by 10 feet. Luke Distefano, engineer for the new building, specifies that the new building will be directly adjacent to the northern property line.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Dottie Laplume, a resident of the mobile home park, stated her concerns over the building of a new Starbucks in the lot. Her house lies directly behind the lot, and she worries about how the new establishment will contribute to the existing traffic problem. Traffic from surrounding businesses block the road both entering and exiting the park, and the fumes and noise from the cars affect the park as well. She believes there is no need for Starbucks because of the similar Dunkin Donuts nearby. She mentions that most of the residents of the mobile home park are elderly and would be negatively affected by the establishment of a Starbucks. She maintains that the residents of the mobile home cannot afford to relocate due to this new development, which causes hardship. She inquires about the bus stop nearby, asking whether or not it will be moved to accommodate the new establishment.

Amadeo Greco had two concerns: the public bus stop and the parking situation beyond the commercial properties. He stated that the only area large enough for the bus stop would be have to be moved in order to accommodate the new business, which would directly effect all the residents that use public transportation. He also believes that there will be more parking problems due to customers blocking streets while trying to enter commercial establishments. The traffic on Woodbury Avenue prevents the mobile home residents from exiting in a timely manner from the park. Any more attraction to the area from a commercial business would only add to the existing traffic problem.

Lenore Wise-Bronson was concerned with the runoff from the wetland that empties into the mobile home park. She mentioned that Starbucks Coffee Company was planning on creating a storm water runoff treatment system, but wants to know what will happen if Starbucks vacates the lot, like the previous Pizza Hut. This creates a violation of the Wetland Protection Ordinance, and it also allows water to accumulate at lower points on nearby properties. She stated that the building would also obstruct the view from the porches of the mobile home residents, and create noise problems. She also mentioned the traffic problems and accidents caused by backed up traffic, and the danger of making left hand turns from Woodbury Avenue. She inquired whether the fur trees on the property would be kept. She also inquired about whether or not anything could be done about the volume of the speakers in the drive-through, for the sake of the residents of the mobile home park. She asked whether or not there is any affiliation between Portsmouth Farms and Kane Realty.

Mr. LeBlanc asked what the relevance of the question was.

Ms. Wise-Bronson stated that any board member affiliated with either company must reclude themselves.

Mr. Marchewka answers that he is affiliated with Kain Realty but has no affiliation with Portsmouth Farms.

Jack Copeland stated that those living in residential districts are entitled to quiet enjoyment of their property. This could be lost if commercial properties continue to develop. Several factors prohibit quiet enjoyment, such as heavy traffic flow and truck deliveries to businesses that occur at odd hours. He requests a prohibition of truck deliveries between the hours of 11pm and 7am.

Amadeo Greco brings up an unrelated concern of runoff from the existing carwash. The water from the carwash accumulates in the middle of his property, flooding areas. He also expressed concern over the lack of police near his home, and the danger of the crime that new business may bring. He stated that most of the residents of the park are elderly and have trouble getting places, which explains their absence at said meeting.

Dottie LaPlume expressed concern over the growing runoff onto her property, as well as the litter and pollution from the busy roads and dumpsters nearby. The brook on her property often floods and she asked that it be looked into. She asked if the wetland property was grandfathered since the last meeting.

Lucy Tillman clarifies the progression of the applications explaining that a previous application called for the use of the existing building, the new one calls for the demolition and reconstruction of a smaller building with better drainage.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Attorney Pelech explained that the previous plans were to use the existing building, but that was changed after it was decided that it was too large. The Planning Board and Conservation Committee both recommended the construction of a smaller building in the lot. He noted that the mobile home park was built upon a filled wetland, and that the concerns of the residents are not relevant to the variances, because they involve issues from already existing conditions. The onsite stormwater

retention will reduce the volume of water as well as the runoff from the site. The solid stockade fence will block any trash or debris from the road, and protect the wetlands. He stated that there is a 12 ft. difference between the elevation of the lot and the mobile home park.

Mr. Marchewka asked about the volume of the drive-through and the hours of operation.

Attorney Pelech explained that the direction of the drive-through was changed in order to lessen the amount of noise for the mobile home park. He then asked Kevin Petrou to answer questions regarding the hours of operation.

Kevin Petrou, of Starbucks, stated that the hours of operation would be from 6 am to 10 pm on weekdays, with the weekend days closing around 11 pm to midnight. He stated that 60% of business occurs between 6 am and 10 am.

Mr. Marchewka inquired about deliveries to the lot.

Kevin Petrou stated that deliveries are varied, but most deliveries in the Boston area occur during the hours of operation of the store.

Mr. Parrott inquired about specific numbers of the traffic flow through the drive-through.

Kevin Petrou explained that he was unsure about the exact numbers, so he would prefer to address the question at the next site plan review.

Mr. Parrott asked for an estimate of the amount of people using the drive-through per day.

Kevin Petrou estimated that about 30 to 40 vehicles use the drive-through at peak hours.

Mr. Parrott asked if this high use volume would affect the existing traffic problems.

Kevin Petrou responded by stating that Starbucks is not a destination business, and that the new addition would not bring more traffic to the area, but accommodates those already using the commercial businesses nearby. He does not anticipate any increase in traffic in the area. He also notes that the peak hours for Starbucks occur during a time of decreased traffic.

Mr. Parrott asked what the percentage split of those entering the business and those using the drive-through would be.

Kevin Petrou stated most Starbucks do roughly 50% of their business through the drive-through throughout the day.

Attorney Pelech added that the blockage of the roads and residential driveways are due to backup traffic from the Jiffy Lube.

Mr. Berg asked if Starbucks requested the parking variance to allow for a handicapped entrance.

Attorney Pelech stated that the canopy covers the wheelchair entrance in order to keep it ice free.

Luke Distefano explained that the canopy is both for the architectural aesthetics and the secondary entrance. He also states that the south entrance is the main entrance to the business and that both entrances are handicap accessible. Both entrances are near handicapped parking spaces.

Jack Copeland asked the Board to consider the amount of noise coming from engines parked, waiting or using the drive-through. He also stated that there is little recourse for the residents or the police against those who commit traffic and parking violations in the area.

With no one further rising, the public hearing was closed.

**DECISION OF THE BOARD**

Mr. Witham made a motion to grant both variances with the stipulations set forth by the planning department, plus an additional stipulation - that the parking spot in the southwest corner of the lot be eliminated. They have one more parking spot than required and that one is within the variance setback and creates a dangerous situation for cars backing out.

Mr. Berg seconded the motion.

Mr. Witham stated that, while he did not want to discount the concerns of the abutters, they were mainly concerned with issues which may have been, or will be, dealt with by other boards or authorities. An area variance is the issue before them and he would like to deal only with the two variance requests and not use issues.

The applicants are only looking for 5' of relief from the front setback for an overhang canopy to provide protection at an entrance. The building is no closer than what currently exists. Even if they were to ask them to move the building back 5', it would just bring it that much closer to the wetlands. It is better as it is. With regard to the parking situation, it exists now and he would find it difficult to enforce the 40' setback where, right now, there is less than a foot. He understood the issue of Woodbury Avenue possibly needing to widen. The situation is not like there is on Route 1 where you are required to do that. Eliminating the one parking spot will alleviate safety concerns.

Mr. Witham stated the following reasons for granting the variances:

- The small amount of relief requested from the front setback is for a canopy only. Moving the building 5' back would bring it closer to the wetlands.
- The parking area is located where parking currently exists and is in line with similar properties in the area.
- Considering the small size of the lot, some amount of relief would be necessary and the owners have worked closely with other boards to consider the alternatives. The new building has been adapted to consider the lot size as well as the wetlands.
- To allow parking where it currently exists would not be against the spirit of the ordinance or diminish the value of surrounding properties.

Mr. LeBlanc called for a vote to grant both the variances with the following five stipulations:

- That all previously tabled requests be withdrawn in writing.
- That the Traffic and Safety Committee review the safety of parking spaces located near the site entrance for safe access to, and egress from, those spaces.
- That the headlights from the drive-through and pass-by lanes be shielded from the abutting residences.
- That the loud speakers or any amplified sound system outside the building be installed and maintained in such a manner as to not be heard at the property line of the abutting residences.
- That the one parking space on the southwest corner nearest Woodbury Avenue be eliminated.

A motion to grant the petition was passed by a unanimous vote of 7 to 0.

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2) Petition of **Virginia Copeland, owner**, for property located at **375 Banfield Road Unit A** wherein a Variance from Article II, Section 10-209(13) is requested to allow an automobile repair facility within 500' of a Single Residence B district where a 500' set back to a residential district is required. Said property is shown on Assessor Plan 266 as Lot 7 and lies within the Industrial district. Case # 3-3

**SPEAKING IN FAVOR OF THE PETITION**

Jack Copeland requested a variance to allow a vehicle repair facility within 500 ft of a residence. He stated that the residence had been sold and is no longer occupied.

Mr. Leblanc inquired if the property was empty.

Jack Copeland stated that the property was vacant, and that it was demolished previously and now sits as a vacant lot.

Mr. Berg asked which lot he was requesting the variance for.

Jack Copeland stated that it was Unit A at 375 Banfield Road.

Mr. Witham asked how close Unit A would be to a residence.

Lucy Tillman clarified that the property runs along Banfield Road, and that the lot in question is in an industrial zone. A residential area is across the street.

Mr. Berg asked if there were houses across the street.

Jack Copeland responded that there is a girl scout camp and several houses across the street.

Mr. Witham asked how long Mr. Copeland's property had been operational.

Jack Copeland explained that his property had been operational since the 1950's, and that it is pre-date zoned.

**SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Eckert requested that all the tests asked for the general public be complied with. He asked how many vehicles will be present on the property, and if the new business would be equipped with both men's and women's facilities. He also asked if there was to be fenced in screening for the vehicles from the road, and if there was to be any parking or selling of vehicles on the property. He asked if there was to be any pollution from vehicle leaks into the wetlands or neighboring pond. He asked what the hours of operation would be, if there will be lighting or signage on the property, and if so, what type. He requested that the Board make a decision in the interest of the public. He also commented on the appearance of the lot presently, stating that it is not well kept and that it reduces his property value as it stands.

With no one further rising, the public hearing was closed.

**DECISION OF THE BOARD**

Mr. Berg moved to grant the petition as presented and advertised, which was seconded by Mr. Holloway.

Mr. Berg stated that this was a unique situation in that you have industrial zoning on one side of the road and residential on the opposite side. Some of the uses that are permitted in the industrial zone are not permitted if they are within a given number of feet from a residential district. He believed that 500 ft. is a substantial distance from the residential area, and would not devalue any of the residential property. The property will be used for auto repair and should not infringe on the public interest.

Mr. Berg stated that the special conditions creating a hardship are the abutting districts and, with the zoning line down the middle of the road, all uses would have to be 500' back which is not practical. The zoning ordinance is interfering with the rights of the owners on the industrial side to a reasonable use. He added that there is no residential use currently on the other side of the street from the property and he didn't see a second auto repair facility, which is an otherwise permitted use on a multi use property, having any impact on the neighborhood.

Mr. Holloway, in seconding, said he had nothing to add.

Mr. Witham stated that the property had existed long before zoning and had always operated as an industrial-type use, 20' to 30' from a residential zone, which has now been changed to 500'. He felt it was important to maintain the City's industrial uses in this type of zone. He would like to add a stipulation which was part of a previous variance from November 21, 2000. It stated that the screening be provided in accordance with the zoning ordinance and be verified by a zoning officer.

Messrs Berg and Holloway agreed to the stipulation

Mr. Marchewka stated that no persons were affected by the industrial zone and that all residents were a substantial distance from the lot.

Mr. LeBlanc called for the vote to grant with the following stipulation:

- That screening be provided in accordance with the Zoning Ordinance and verified by the Zoning Officer.

A motion to grant the petition with the stipulation was passed by a unanimous vote of 7 to 0.

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3) **Petition of T Beyar Realty LLC, owner, Northeast Conversions LLC Truck Division, applicant, for property located at 141 Banfield Road** wherein a Variance from Article II, Section 10-209(13) is requested to allow the sale of up to 10 vehicles within 225'± of a Single Residence B district where the use would be allowed by a Special Exception if the property was located 500' from a residential district. Said property is shown on Assessor Plan 254 as Lot 2 and lies within the Industrial district. Case # 3-4

Mr. Marchewka stepped down for this petition.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Pelech stated that the lot is used for both a condominium and an industrial zone. He states that the business does not have a high traffic flow, and that most of the sales are made online or by phone. The intent of the ordinance is to keep the automobile dealership from close proximity to residences. The closest residence is over one quarter of a mile in distance from the site. The closest abutters are the concrete plant at Pike Industries, the Girl Scout Camp and the Temple Israel Cemetery. He stated that there was no public benefit from the denial of the application. The value of the surrounding properties would not be diminished by the variance, and the business operates during regular business hours.

Mr. Berg inquired about whether or not the business has a showroom and asked for the size of the building.

Attorney Pelech responded that the business does not have a showroom and that it was approximately 1200 sf.

Doug Brigam verified that all sales were either online, through car shows or by appointment.

Mr. Parrott inquired if there is or will be any requests for signage or advertisement in the future.

Doug Brigam responded that the present signs were adequate.

With no one further rising, the public hearing was closed.

**DECISION OF THE BOARD**

Mr. Berg made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Berg stated that he would like to incorporate many of the comments he had made on the previous petition. The special condition is the zoning line which is straight down the middle of the road, forcing a use that is otherwise permitted in the district back 500' from the road. The intent of the variance is not to prohibit these uses, but to keep them away from residences where they could have an impact. There are no residences with 1,000' so there is no relationship between the ordinance and the specific restriction. It is consistent with the spirit of the ordinance as it is an allowed use. The value of the surrounding properties will not be affected.

Mr. Parrott agreed with Mr. Berg.

Mr. Witham stated that he would like to add two stipulations to the motion:

- that vehicles not be allowed to park in front of the building, and
- that advertisement be limited to the sticker on the side window, with no balloons, banners or other types of on-site advertising.

Messrs. Berg and Parrott had no objection to adding the stipulations.

Mr. LeBlanc called for a vote on the variance with the stipulations.

A motion to grant the petition was passed by a unanimous vote of 6 to 0.

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4) Petition of **Hill-Hanover Group, LLC, owner**, for property located at **349 Hanover Street** wherein a Variance from Article XII, Section 10-1201(A)(3)(a)(4) is requested to allow a vehicle to back out onto Hanover Street from a single parking space. Said property is shown on Assessor Plan 138 as Lot 64 and lies within the Mixed Residential Office district. Case # 3-5

Mr. Berg stepped down for this petition.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney David Brown asked that the Board grant this variance. This variance is a solution between the residents and the business, so that they can continue to use and park in the space. He stated that the two parking spaces are needed for the business, but also needed for the residents who park there

occasionally. The solution that was agreed upon was to reposition the parking spaces, creating the problem of backing out onto Hanover Street. The repositioned parking space allows the same number of parking spots to remain.

Cory Colwell stated that the plan is very similar to a previous plan outlined in January. Since the parking spot is angled and leads onto Hanover Street, requiring a curb cut issue from the Department of Public Works and the variance. There is no change to the sealed surface, it is still 22%. This one spot is the only one that requires the issue and variance. The reason for the spot is due to position of the lot and the parking lot nearby. This compromise is a good way to resolve the issue. He wanted to receive the approval of the Board of Adjustments on the variance before going to the Department of Public Works for the curb cut issue.

Mr. Jousse asked if the parking space could be moved forward 15 ft.

Mr. Colwell responded that it could.

Mr. Jousse asked if he would still need the curb cut if he moved the space.

Mr. Colwell stated that the parking space could be moved, but you would still need to access the spot from Hanover Street. The reason it is not feasible is because the space where it could be moved was being used for other parking.

Mr. Jousse stated that the indication of 'common right of way' on the street is actually a parking area used by Kearsage Condominiums.

Mr. Colwell stated that that is correct, and that they received prior approval to use the lot as a parking area. When it was built in 1986 as part of the condominium, there was confusion as to where the lots began and ended. Only after he surveyed the area did he find out that there was a violation and residents were parking in the right of way.

Mr. Jousse asked how residents of Unit II entered their parking spaces.

Mr. Colwell stated that they could enter from a road in the rear, near Hill Street.

Mr. Jousse asked if the residents could enter Hanover Street from the rear.

Mr. Colwell stated that those residents must exit through the same back road from which they entered.

Attorney Brown stated that the variance falls under the category of use instead of area. He also stated that the variance would be beneficial to both the residents of the condominium and the public, as it relieves the congestion of parking on the street. This variance would also benefit the area as well as the owner by lessening the likelihood of accidents. He stated that it was a reasonable request for this setting, and that it had no impact on previous ordinances. He also stated that granting the variance would not cause injury to the public. Attorney Brown stated it is in line with the spirit of the ordinance, and increases tax revenues.

Mr. Witham asked whether or not the fence on the property had to be removed.

Attorney Brown responded that the fence was in bad shape and that the plan was to remove it, create landscaping and install a newer fence.

Mr. Witham stated that a marking house number was missing, which is required.

Attorney Brown stated that he was unaware of that situation and will correct it.

Attorney Sharon Somers stated that the variance was a resolution agreed upon by the owner of the property and the condominium owner. She believed that the substantial justice is met. She restated the variances and stated that she would rectify any confusion regarding the land by going to the Planning Board and obtaining an amended site plan. The zoning restriction as applied doesn't interfere with the reasonable use of the property considering the unique setting of the property. The variance will not injure public or private rights, and it would be in the public interest to allow consistency in the parking arrangements that were previously approved. There will be no diminution of the property value for surrounding residences.

Mr. LeBlanc asked who would benefit from the right of way.

Attorney Somers stated the Hill-Hanover Company benefits from the right of way. She also detailed a plan to create a new right of way to benefit Hill-Hanover, which will act as a new access easement to allow travel from the parking lot to Hanover Street.

With no one further rising, the public hearing was closed.

**DECISION OF THE BOARD**

Mr. Witham made a motion to grant the petition as presented and advertised, which was seconded by Mr. Marchewka.

Mr. Witham stated that, with the straight configuration of the street, good sight lines and the relatively slow speed of the traffic, this is a street that is able to handle one car backing out onto it. The unique setting is the way the building occupies the site. Zoning requires on-site parking, but the only way to comply by having a car back out. This option, as opposed to not having on-side parking, best serves the public interest. He didn't see any injury to the public or private right of others and there doesn't seem to be opposition. He felt it was consistent with the spirit of the ordinance to remove a car from the street and onto a property while still maintaining safe driving conditions. There would be no diminution in surrounding property values.

Mr. Marchewka agreed with Mr. Witham. He stated that it was a reasonable request that benefited the abutter and the public in general.

Mr. LeBlanc called for a vote on the variance.

A motion to grant the petition was passed by a unanimous vote of 6 to 0.

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5) Petition of **Jonathan and Joann E. Wyckoff, owner**, for property located at **135 Sparhawk Street** wherein a Variance from Article III, Section 10-301(A)(7)(b) is requested to allow a 12' x 18' one story addition 59'± from the edge of wetlands and 3' x 8' stairs 56'± from the edge of wetlands where 100' is the minimum required. Said property is shown on Assessor Plan 159 as Lot 5 and lies within the General Residence A district. Case # 3-6

Mr. Jousse stepped down for this petition.

**SPEAKING IN FAVOR OF THE PETITION**

Jonathan Wyckoff stated that his house is in a residential area with several other houses nearby. The house was built in the 1830's and some areas of the house are as close as 3 ft. from the curb. He is requesting the variance so that he can add an addition to his property to use for relaxation, due to the high traffic volume and noise of the apartment rentals nearby. He plans on using the same amount of land that the deck currently uses. The area designated for the addition is the only feasible location for

it on the property. The wetlands value would not be impacted, and he intends to build the structure much like a porch with concrete tubes. He will be completing the construction himself, and stated that there will be no excavation or disruption to the wetlands. There would be no damage to any vegetation in the surrounding area. The whole project would be very low impact.

Mr. Berg asked whether or not the distance of 59 ft. from the wetlands was a measurement taken by Mr. Wyckoff.

Mr. Wyckoff responded that he did measure the distance himself, and that it is accurate give or take a few inches.

Mr. Leblanc asked if the 59 ft. was the edge of the new construction.

Mr. Wyckoff stated that it was. The stairs leading down from the new construction will be 56 ft. from the edge.

Mr. Leblanc inquired how the stairs would be installed on to the land.

Mr. Wyckoff stated that he will be using a concrete slab to stabilize and place underneath them.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Steve Miller stated that he is an active member of the Advocates of North Mill Pond, which protects water and the environment around the pond. He stated that the wetland buffers are the group's most valuable tool for protecting the wetlands and the water of the pond. The buffers act as a filter for runoff and water entering the pond, and protect the water quality of the wetland. He stated that the buffers were critical to the surface water, and without them the quality and environment surrounding the wetlands will suffer. He stated that he was concerned about any breach of the buffer. Since this is the first request for a variance involving the wetland buffer from a residential area, he is concerned that it will create a precedent for an infringement of the wetlands.

With no one further rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Mr. Berg asked whether or not the Board would accept a hand drawn sketch of the anticipated addition.

Mr. LeBlanc stated that he sees no problem with a hand drawn picture, because it clearly shows all the dimensions relevant to the variance.

Mr. Parrott made a motion to grant the petition as presented and advertised, which was seconded by Mr. Holloway.

Mr. Parrott stated that the proposed addition is like an in-fill in the sense that it is on the middle of the house on the middle of the lot. It doesn't project any further toward the marsh, which is not pristine, than the existing structure. Putting it on sonatubes is a positive aspect because, even though the water is running off, the ground is not going to be entirely covered over. Basically, this is a small house and a small addition and it is situated about the only place it could go and make sense.

With the location in the middle of the lot, there will be no public interest involved. The location on the lot creates the hardship and the applicants can't go out the other three sides so an area variance is the only way to expand the house. When you have a property and house this small, some additional living space is within the spirit of the ordinance. Substantial justice is done by allow them to have the benefit

of their property without intruding on someone else's rights. If there were any change to the surrounding properties, it would be of a positive nature.

Mr. Holloway agreed with Mr. Parrott.

Mr. Marchewka asked whether or not this variance should be dealt with by the Conservation Commission since it deals with a wetlands setback.

Lucy Tillman stated that it is not a Conservation Commission issue since it deals with the marsh and not the inland wetland setback. It is outlined in Article III and lies in the Board of Adjustment jurisdiction.

Chairman LeBlanc stated that it was a minimal request. This is not a pristine area and there is no place on the property where an addition could be constructed without requiring a variance. The precautions that the owner has stated he would take to protect the marshland will benefit the public.

A motion to grant the petition was passed by a vote of 5 to 1.

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6) Petition of **Lewis B. and Dorothy W. Sykes, owners**, for property located at **1047 Banfield Road** wherein a Variance from Article II, Section 10-206(11) is requested to allow a 1,620± sf woodworking / furniture repair and refinishing business as a Home Occupation I in a proposed building attached to an existing single family dwelling. Said property is shown on Assessor Plan 283 as Lot 40 and lies within the Single Residence A district. Case # 3-7

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Tom Watson stated that the property is roughly 4.75 acres, one of the larger properties in the residential area. To the left of the property is city owned, natural resource protected property. The property as it stands consists of a house, an attached garage and a swimming pool. The house sits 275 ft. back from Banfield Road, at a higher elevation than the road, behind a wooded area. The house sits 150 ft. from the closest adjacent properties. The owner of the property wishes to construct the new building in order to start a woodworking business that would supplement his income. The owner presently operates a small scale woodworking/furniture repair business out of his attached garage that employs no other employees and has no advertisements or signage. There are no deliveries of furniture or supplies to the residence, as the owner does operate the business solely by himself. There is no threat of pollution to the ground or water surrounding the property. The nearest wetlands to the property are over the 100 ft. buffer, making the likelihood of an adverse impact on the wetlands very unlikely. The size of the proposed workshop is 30 x 50 ft, which would accommodate his tools and furniture storage. The entrance to the proposed workshop would be in the rear, away from surrounding residences. The proposed building would be wood framed, consistent with typical New England architecture. Despite the size of the building, there will not be an increase in the activity of the business. The owner's house will obstruct most of the view of the addition. Attorney Watson then passed around photographs of the property and surrounding wetlands. Attorney Watson stated that the variance is not contrary to the public interest. There is no other feasible alternative or place on the property in which to put the workshop.

Mr. Berg asked how much of the owner's income was from the woodworking business.

Attorney Tom Watson replied that about 35% to 40 % of his income was from his woodworking business.

Mr. Berg asked if the new building would be insulated and also if the current workshop in the attached garage was insulated.

Attorney Watson replied that the present garage was insulated, and the proposed workshop would also be insulated.

### **SPEAKING IN OPPOSITION OF THE PETITION**

Ruth McClain stated her property is an abutter to the Sykes property. She stated that the residential area is an SRA zone, or single residence area. Banfield Road has become a light industrial area in several places. She stated that the residents near the Sykes property wish to keep the area free of businesses, and that any industrialization will effect the value of surrounding properties. She states that the anticipated workshop is far greater than a residential area should have and will include an office, storage room, additional shop space, a wood shop and a break room. The proposed shop will be about 620 square feet. Home occupations are limited to a maximum of 300 square feet of gross floor area; building a larger shop will be in violation of this limit. Saws, drills, air compressors and other high powered tools will create disruptive noise. The chemical 5F5, used as a paint and vanish remover, is highly toxic and is frequently used by Mr. Sykes. There is a concern that this could in filtrate the surrounding environment and harm neighborhood children and animals. Mr. Sykes property is nearby to the wetlands, which could be disrupted by the construction and operation of a woodshop. Ruth McClain submitted a petition with the signatures of all the abutters and neighbors that urges the Board to deny the variance for Mr. Sykes. She hoped the Board will consider her concerns.

Mr. Berg asked if Mr. Sykes has ever disrupted nearby neighbors with his present woodshop in the garage.

Ms. McClain stated that they do not enter his fenced in property. Her concern is that he is already out of compliance due to a 572 square foot garage.

Mr. Berg asked if Ms. McCain would be satisfied with Mr. Sykes scaling back his present garage workspace to 300 square feet to comply with regulation.

Mr. McCain stated that he is nondisruptive and does not disturb neighbors by working in his present garage. His concern is that the proposed building is bigger than their house, and the houses of their neighbors as well as Mr. Sykes' home.

Julie Marlone is an abutter to Mr. Sykes and stated that she was opposed to the construction of a new woodshop on Mr. Sykes property. She stated that the proposed size is too large, and that it is almost five times the allowed square footage of a home business. She stated that the use of the shop would not be secondary or incidental, which violates home occupation regulations. The proposed building will be 24 by 58 ft, making it 1392 square feet. Since the proposed building is going to be larger than the residence, Mr. Sykes' workshop would not be secondary or incidental to his home. She stated her concern for hazardous materials being used on the property, and would like to know how Mr. Sykes disposes of his hazardous waste material. She stated that it would have a negative impact on the surrounding property values. She was informed that if Mr. Sykes' property was ever sold, the variance would still be valid, which could lead to more industrialization of a residential area. She stated that she believes Mr. Sykes is trying to operate a full business in a residential area due to the sheer size of the proposed addition.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Attorney Watson stated that the abutters have not had problems with Mr. Sykes in the past, and that their concerns were due only to the construction of a new building. The activity on Mr. Sykes property will not change, and Mr. Sykes work will not be disruptive. Mr. Sykes will comply with all regulations and limitations imposed on him or his workspace. Mr. Sykes was also unaware of his violation due to his large garage workspace.

Mr. Holloway asked why it was necessary to include such a large break room and why additional storage was necessary.

Attorney Watson stated that the break room would be used as a personal area for Mr. Sykes and that it would only be an area free of equipment.

Mr. Holloway asked why he needed an office if the break room was for personal use.

Attorney Watson stated that Mr. Sykes would use the office for personal use.

Mr. Holloway asked how Mr. Sykes disposes of hazardous materials.

Mr. Watson stated that he kept no more than one can per job on site, and that he disposed of the materials properly by placing them in a metal container and disposing of it.

Mr. Holloway asked about the safety of the storage room.

Mr. Watson stated that there would be metal shelves in the room, and that it would only be accessible from inside of the building, with no outside entrance.

Mr. Berg asked if the toxic substances that Mr. Sykes used were available to be purchased at retail stores such as Home Depot, or if they had to be special ordered.

Attorney Watson stated that he had the same chemicals in his basement.

Mr. Berg asked inquired about the size of the canisters. He asked if it came in one gallon cans or 55 gallon drums.

Mr. Watson stated that he used the one gallon cans.

With no one further rising, the public hearing was closed.

## **DECISION OF THE BOARD**

Mr. Jousse made a motion to deny the petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Jousse stated that he is not against home occupation, but if the variance were to be granted, it would be permanently valid for the land. This could create a problem, since the proposed building could accommodate a full scale business in the future. Any home business construction must be limited to the homeowner as the main and only employee, and all business must be kept manageable. This might not be possible due to the size of the anticipated addition. The proposed addition is far too large for a residential area, therefore granting the variance would be contrary to the public interest. Not granting the variance would not cause the property owner hardship, as he already has a useable workspace. He stated the zoning restriction does not interfere with the reasonable use of the property as Mr. Sykes has operated his home business in his garage for the past eight years, Mr. Jousse sees no reason why he must upgrade to such a large extent. If granted, the variance would not be consistent with the spirit of the ordinance, and substantial justice would be done by not granting the variance.

Mr. Parrott stated that his sense of the Home Occupation Exception is someone who uses a room in their existing house for a low impact operation incidental to the main use of the house as a residence. Such a large addition to a house would not make it secondary or incidental. He believed that Mr. Sykes will use the variance properly, but cannot determine how the variance will be used in the future. The operation is clearly a business and not a hobby and, with a garage dimensioned over 500 s.f., an

argument could be made that the present use was already in violation of the home occupation portion of the zoning ordinance.

Mr. Berg stated that he supported the applicant's right to have a shop on the property, but the proposed building is too large. The applicant's attorney had stated that this is a lucrative part of the applicant's life and decidedly a business. Mr. Berg stated that the size crossed the line as an industrial use in a residential neighborhood.

Mr. Witham stated that the 300 square foot limit is in place for the purpose of controlling the type and size of the Home Occupation operations as well as the impact on the abutters. He didn't feel the project satisfied that portion of the criteria.

Mr. Marchewka agreed, stating that the boundaries were pushed when the size of the workshop is bigger than the house. It crosses the line from incidental and secondary use.

Chairman LeBlanc stated that he will not support the motion. The applicant has the right to build and operate a home occupation on his property.

A motion to deny the petition was passed by a vote of 6 to 1.

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(7) Petition of **Anthony J. Balakier and Cherie L. Geiger, owners**, for property located at **490 Islington Street** wherein a Variance from Article III, Section 10-303(A) is requested to allow: a) an angled bay window on the 2<sup>nd</sup> second floor having a 4.6'± front yard, and b) a rectangular bay window on the 3<sup>rd</sup> floor having a 4.2'± front yard where 5' is the minimum required front yard. Said property is shown on Assessor Plan 156 as Lot 1 and lies within the Mixed Residential Business district. Case # 3-8

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech stated that Lucy Tillman found violations on the property that created the need for the variance. He stated that the existing bay windows exceed the allotted distance to Islington Street, which has a five foot setback. This is a dimensional request under the Boccia standard and will not create a diminution to the abutting residences. Both bump-outs are above street level. It is not contrary to the spirit of the ordinance and substantial justice will be done if the variance is granted. The relief being requested is minimal, and there is no reasonably feasible alternative.

Mr. Berg asked why it is not an equitable waiver question.

Lucy Tillman stated that there was a ten year new construction requirement.

Mr. LeBlanc pointed out that the windows are further away from the property line than the square bump-out.

Attorney Pelech stated that the map is deceiving.

Mr. Berg stated that the bump-out that is closest to the street is behind the property line of the building.

With no one further rising, the public hearing was closed.

**DECISION OF THE BOARD**

Approved July 25, 2006

Mr. Marchewka made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Marchewka stated that he believed the violation of the ordinance was a clear and minor mistake. Half of each window is conforming to the standards. The alternative would be to remove the windows, which would be an excessive punishment for such a minor infraction. The relief required is minor and would not be contrary to the public interest. The windows are on the second and third floors and will not interfere with street traffic or pose a problem due to size. The special conditions would be that the front lot line is angled and that half of the windows are in compliance.

Mr. Parrott stated that the amount of relief is minor and reasonable.

Mr. Berg stated that the violations were mistakes involving only inches. No usable square footage was gained..

A motion to grant the petition was passed by a vote of 7 to 0.

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**III. ADJOURNMENT**

A motion was made, seconded and passed to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Danielle Auger  
Acting BOA Secretary